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26 UNITED STATES DISTRICT COURT  
27 NORTHERN DISTRICT OF CALIFORNIA  
28 SAN JOSE DIVISION

29 HORTA, LLC,

30 Plaintiff,

31 v.

32 CITY OF SAN JOSE,

33 Defendant.

CASE NO. C 02-04086 JF (RS)

[Related Case Nos. C 00-20018 JF  
and C 05-03778 JF]

STIPULATION AND [~~PROPOSED~~] ORDER  
REGARDING HEARING ON MOTION TO  
RECONSIDER, REOPEN AND AMEND  
JUDGMENT

Judge: Hon. Jeremy Fogel  
Complaint: August 23, 2002

STIPULATION

WHEREAS, on February 28, 2005, the Court entered judgment in this action brought by Horta against the City of San Jose (the "*San Jose Action*");

WHEREAS, on March 14, 2005, plaintiff Horta, LLC ("Horta") filed its Motion to Reconsider, Reopen, and Amend Judgment (the "Motion to Amend") and set it for hearing on May 6, 2005;

WHEREAS, on May 6, 2005, the Court continued the hearing on the Motion to Amend to August 5, 2005 to permit Horta to conduct additional discovery relating to issues presented in the Motion to Amend;

WHEREAS, Horta has filed a separate action to enforce its right to the requested discovery from the Federal Aviation Administration in the related case *Horta, LLC v. Federal Aviation Administration, et al.*, United States District Court, Northern District of California, Case No. C 05-03778 JF (the "*FAA Action*");

WHEREAS, on October 27, 2005, Horta filed a motion for summary judgment in the *FAA Action* to compel the FAA to provide complete responses to Horta's discovery requests and to provide the requested deposition testimony;

WHEREAS, the Court took the FAA's motion to quash and Horta's motion for summary judgment under submission at the close of the December 16, 2005 combined hearing on the motions and has not yet ruled on them;

WHEREAS, the parties have previously stipulated to and the Court has ordered a number of continuances of the hearing on the Motion to Reconsider, Reopen and Amend Judgment, most recently continuing the hearing to May 18, 2007;

WHEREAS, on February 23, 2007, the Court continued the hearing on the Motion to Reconsider, Reopen and Amend Judgment and provided, pursuant to the parties stipulation, that pending the resolution of settlement discussions with City will not cite operations for the purpose of transporting the San Jose SaberCats arena football team as violations of the curfew;

WHEREAS, Horta and the City of San Jose have reached a tentative settlement, but have not yet resolved this matter; and

1 WHEREAS, Horta and the City of San Jose (the "City") agree that:

2 (1) The hearing on the Motion to Reconsider, Reopen and Amend Judgment should be  
3 continued to a date not earlier than June 1, 2007;

4 (2) The parties will inform the Court if a settlement is concluded prior to the  
5 continued hearing date;

6 (3) This continuance will be on the same terms and conditions as the stipulation and  
7 order filed February 23, 2007;

8 THEREFORE, IT IS HEREBY STIPULATED by and between the parties to this action,  
9 that:

10 (1) The hearing on the Motion to Reconsider, Reopen and Amend Judgment should be  
11 continued to May 18, 2007;

12 (2) The parties will inform the Court if a settlement is concluded prior to the  
13 continued hearing date;

14 (3) This continuance will be on the same terms and conditions as the stipulation and  
15 order filed February 23, 2007.



16 Dated: May 15, 2007

SHEPPARD MULLIN RICHTER & HAMPTON LLP

17  
18 By                                 /s/                                  
19 JAMES CHADWICK  
20 Attorneys for Plaintiff HORTA, LLC

21 Dated: May 15, 2007

RICHARD DOYLE, City Attorney

22  
23 By    
24 NORA FRIMAN  
25 JOSEPH P. DICIUCCIO  
26 Attorneys for Defendant CITY OF SAN JOSE  
27  
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ORDER

Pursuant to stipulation, and good cause appearing therefor, IT IS SO ORDERED:

(1) The hearing on the Motion to Reconsider, Reopen and Amend Judgment should be continued to June 1, 2007;

(2) The parties will inform the Court if a settlement is concluded prior to the continued hearing date;

(3) This continuance will be on the same terms and conditions as the stipulation and order filed February 23, 2007.

Dated: May 17, 2007



HON. JEREMY FOGEL  
UNITED STATES DISTRICT COURT JUDGE